

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Universal Service Contribution Methodology) WC Docket No. 06-122
)

COMMENTS OF NETWORK ENHANCED TELECOM, LLP (“NETWORKIP”)

Network Enhanced Telecom, LLP (“NetworkIP”), hereby files comments in response to the Commission’s Public Notice seeking comment on proposed changes to FCC Forms 499-A and 499-Q and their accompanying instructions.¹ As discussed in more detail below, in revising the reseller certification language, the Commission must recognize and address situations where there are *multiple resellers* involved, and the final reseller contributes on the revenue it obtains from the service. Some of the certification language proposed in the Public Notice would *not* address such situations, and thus it must be modified.

I. THE PURPOSE OF THE RESELLER RULE IS TO AVOID DOUBLE-ASSESSMENT OF REVENUES

The purpose of obtaining certifications from reseller customers is to support the Commission’s conclusion that, under the current methodology, it will assess contributions “only once in the distribution chain,”² which is necessary to “eliminate[] the double payment problem,”

¹ *Wireline Competition Bureau Seeks Comment on Proposed Changes to FCC Form 499-A, FCC Form 499-Q, and Accompanying Instructions*, WC Docket No. 06-122, Public Notice, FCC 12-1872 (rel. No. 23, 2012) (“Public Notice”).

² *Universal Service Contribution Methodology, Application for Review of Decision of the Wireline Competition Bureau filed by Global Crossing Bandwidth, Inc. et al.*, WC Docket No. 06-122, Order, 27 FCC Rcd 13780, 13786 ¶ 11 (2012) (“Reseller Order”).

consistent with statutory requirements.³ As the Wireline Competition Bureau has held, assessing contributions only on end-user revenues ensures “that the contribution mechanism should operate in a competitively neutral manner by preventing double counting of revenue for contribution, but at the same time ensure[s] that such revenue [is] subject to contribution once.”⁴

II. RESALE SCENARIOS FREQUENTLY INVOLVE CHAINS OF MULTIPLE RESELLERS

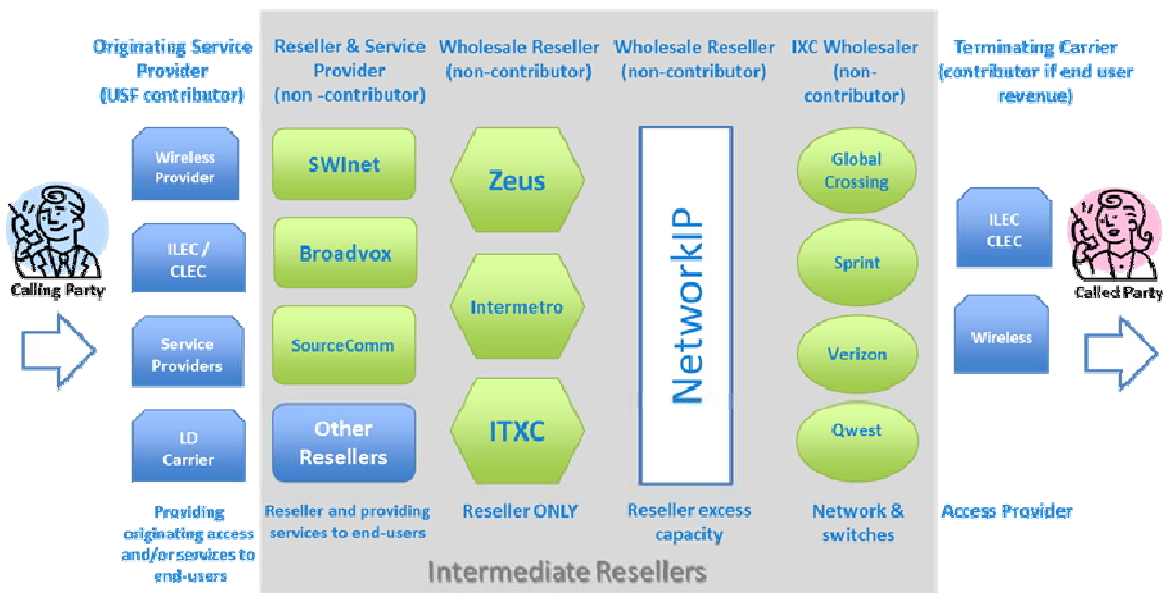
In a variety of contexts, reseller scenarios arise that involve chains of multiple resellers. In the modern communications marketplace, long distance calls are frequently routed through multiple carriers over the course of their journey from calling to called parties. A call might, for example, originate on the network of a wireless carrier, be handed off to a competitive local exchange carrier (“LEC”), be handed off to one or more long distance carriers depending on least-cost routing formulas, and then be handed off to a different LEC or wireless carrier for termination to the called party. The chain can easily involve four or more carriers.

NetworkIP, as a wholesaler of long distance services and provider of software to facilitate the provision of prepaid calling cards, is frequently involved in chains of multiple resellers. A typical example is illustrated in this graphic:

³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9206 ¶ 843 (1997) (subsequent history omitted) (“*First USF Order*”).

⁴ *Federal-State Joint Board on Universal Service; Request for Review of Decision of the Universal Service Administrator by Global Crossing Bandwidth, Inc.*, CC Docket No. 96-45, Order, 24 FCC Rcd 10824, 10829 ¶ 15 (Wireline Comp. Bur. 2009), *rev’d in part on other grounds, Reseller Order, supra*.

USF Accountability Call Flow

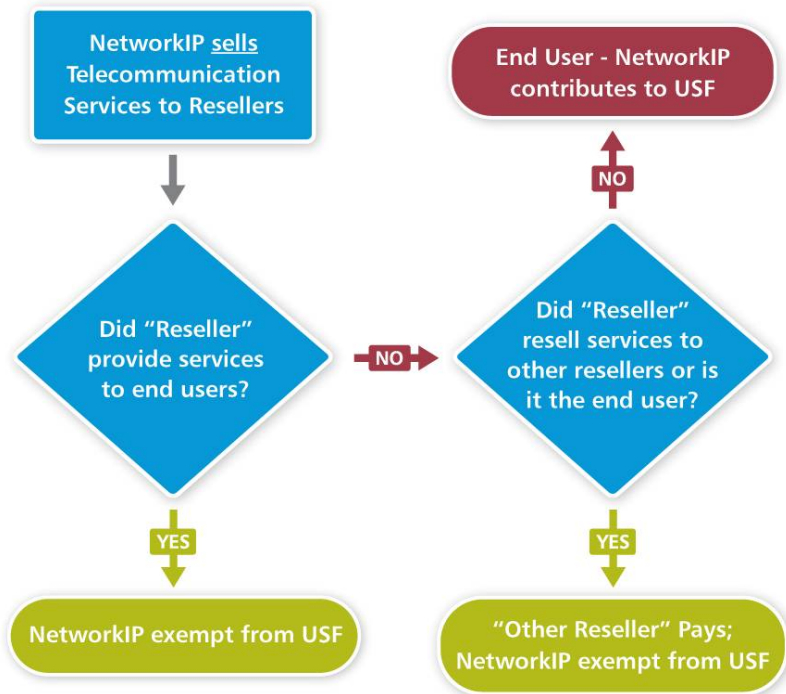


III. THE RESELLER CERTIFICATION LANGUAGE MUST ALLOW INTERMEDIATE RESELLERS TO PROVIDE CERTIFICATIONS

Wherever a call route involves multiple carriers, only the final carrier serves end-user customers. As NetworkIP previously has observed in this docket, to avoid double payment as the Commission requires, only the final carrier in the chain can be required to contribute.⁵ Thus, the instructions must be structured in such a way that carriers selling to “intermediate resellers” are not required to contribute.

The chart below illustrates how the analysis *should* flow in an intermediate reseller scenario:

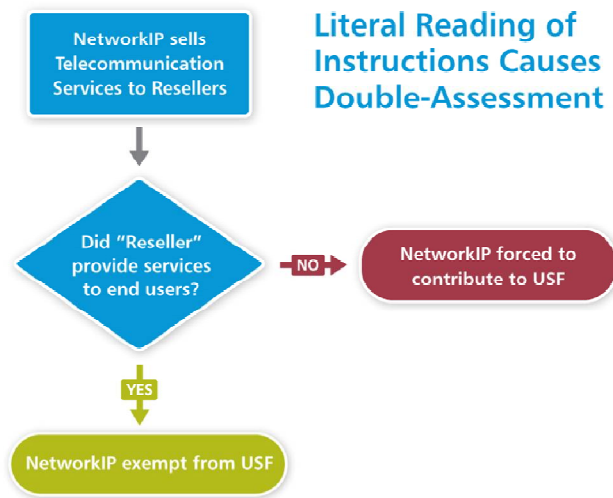
⁵ *Universal Service Contribution Methodology, Request for Review of Decision of the Universal Service Administrator by Network Enhanced Telecom, LLP*, WC Docket No. 06-122, Petition for Reconsideration (filed Nov. 18, 2010) at 11-13.



As proposed, however, parts of the reseller certification language in the draft Form 499-A instructions would fail to address intermediate reseller scenarios. As currently drafted, some of the proposed language would leave intermediate carriers like NetworkIP in the same Catch-22 they find themselves in today – with no clear way to avoid double-assessment of revenue. This Catch-22 is illustrated in this graphic:

NetworkIP's Scenerio

- Literal reading of Instructions would force NetworkIP to treat its intermediate reseller clients, who did not have end-user revenues, as end-users – even if they are resellers, and even if their customers are contributors
- Root Cause: Any carrier that resells to a reseller without end-user revenues is penalized and forced to pay USF, TRS, LNP, etc. per the 499-A instructions.
- Even if their *end-user* revenue is small, these resellers aren't really "*de minimis*"
- Inequitable and Discriminatory
- Leads to double payment



The proposed certification language therefore must be corrected to address this flaw.

The Public Notice apparently proposes to allow filers to select between two alternative reseller certifications.⁶ The first proposed certification (before the word “OR” in the Public Notice) is likely to successfully accommodate intermediate reseller scenarios. Specifically, this first paragraph would allow customers to provide reseller certifications if “each entity to which the company, in turn, sells those offerings has provided the company with a certification in the form specified by the Commission.” Using this language, there does not appear to be any reason that each intermediate reseller in a chain of resellers could not provide a certification to the carrier before it in the chain. The Commission should add language to the instructions, however, specifically clarifying that this is the case. For example, the instructions could provide: *“All intermediate resellers in a chain of resellers may provide a reseller certification to the carrier before it in the chain. The carrier providing service to end users, however, must contribute based on its revenue from the services.”*

⁶ Public Notice, Attachment 2, at 24.

The second alternative reseller certification proposed in the Public Notice (after the word “OR”) does *not* appear to accommodate intermediate reseller scenarios, and must be corrected. Specifically, this language only would allow customers to provide certifications if its downstream customer certifies that it “will contribute directly based on the revenues from each such service.” To correct this problem, the Commission should replace this language with the language from the first certification discussed above. That is, the second certification should be revised to read as follows:

I certify under penalty of perjury that the company is purchasing service ~~for~~ which is incorporated into the company’s offerings. I also certify under penalty of perjury that:

(check one)

_____ The company contributes directly to the federal universal service support mechanisms for those service offerings that incorporate the wholesale service, or if the company resells the service to another ~~contributor~~ reseller, that the company has received a reseller certification from each customer in a form specified by Commission rules ~~that the customer will contribute directly based on revenues from each such service.~~

_____ The company contributes on [number] percent of the revenues for services that incorporate the wholesale service, or has received a reseller certification from its customer in a form specified by the Commission rules for such revenues ~~stating that the customer will contribute directly based on revenues from the service.~~ On the remaining [number] percent of the revenues ~~of from~~ the services that incorporates the wholesale service, the company does not directly contribute, and it does not sell that service to another contributor or intermediate reseller.

In addition, the clarification language discussed above – making clear that “*all intermediate resellers in a chain of resellers may provide a reseller certification to the carrier before it in the chain*” and that “*the carrier providing service to end users must contribute based on its revenue from the services*” should appear in a section of the instructions that applies to both of the alternative forms of certification language.

IV. CONCLUSION

For the foregoing reasons, the Commission should revise the reseller certification language in the new Form 499-A instructions as discussed herein.

Respectfully submitted,

**NETWORK ENHANCED TELECOM, LLP,
("NETWORKIP")**

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January 11, 2013